

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Tracy Rexroat,)	
)	No. CV 11-1028-PHX-PGR
Plaintiff,)	
)	
vs.)	Phoenix, Arizona
)	November 21, 2011
Arizona Department of)	11:06 a.m.
Education,)	
)	
Defendant.)	
)	

BEFORE: THE HONORABLE PAUL G. ROSENBLATT, JUDGE

REPORTER'S TRANSCRIPT OF PROCEEDINGS

SCHEDULING CONFERENCE

APPEARANCES:

For the Plaintiff:

Hall & Chelle

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For the Defendant:

Office of the Attorney General

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Proceedings Reported by Stenographic Court Reporter

Transcript Prepared by Computer-Aided Transcription

1 (Proceedings begin at 11:06 a.m.)

2 THE CLERK: This is civil matter 11-1028, Tracy
3 Rexroat versus Arizona Department of Education, on for
4 scheduling conference.

5 Counsel please announce. 11:07:07

6 MR. HALL: Cameron Hall for plaintiff Tracy Rexroat.

7 MS. BACALZO: Good morning, Your Honor, Rachel Bacalzo
8 with the Arizona Attorney General's Office for the defendant.

9 THE COURT: Well, good morning, Counsel.

10 What gave you the idea, Mr. Hall, that this had been 11:07:20
11 vacated?

12 MR. HALL: Your Honor, my ex-paralegal informed me
13 that it had been rescheduled. I'm going to be out of town
14 again tomorrow to visit my brother --

15 THE COURT: Would you step up, please? 11:07:35

16 MR. HALL: Yes.

17 THE COURT: I can't hear you.

18 MR. HALL: Sorry.

19 My paralegal, who I've since let go, informed me that
20 it was rescheduled. 11:07:42

21 THE COURT: Well, you have a time problem in many
22 respects, Mr. Hall. First of all, this was not vacated.

23 And secondly, you did not provide your contribution to
24 the joint case management report, so the Court doesn't have any
25 idea as to what your Complaint alleges. 11:08:00

1 And we have the substantial issue as to whether or not
2 there's a time bar to the Title VII action as well.

3 Would you step us, please, Counsel?

4 MS. BACALZO: Yes.

5 THE COURT: Let's set the record a bit here. On May
6 24th, 2011, the plaintiff filed a Complaint alleging gender
7 discrimination, in violation of Title VII and the Equal Pay
8 Act. Defendants filed an Answer on July 8th of 2011.

11:08:20

9 On August 9, 2011, the defendants filed a motion for
10 partial judgment on the pleadings. And the plaintiff filed her
11 response on September 26th.

11:08:39

12 On September 27th the plaintiff filed a motion to
13 correct the docket. Defendants filed a response on October 14.

14 The defendants filed a joint case management report on
15 October 3rd, 2011, without the participation of the plaintiff.
16 And on October 11th the Court granted plaintiff's motion to
17 continue the scheduling conference to this date.

11:08:58

18 Have you done any discovery at all, Mr. Hall?

19 MR. HALL: Your Honor, I've drafted discovery requests
20 which, again, I understood had been sent out. But I've
21 discovered since letting the individual go that a lot of what I
22 was told did not occur. So I've not been able to --

11:09:32

23 THE COURT: Well, the order setting this conference,
24 the original order, tells you to get right on with the
25 discovery.

11:09:47

1 MR. HALL: Yes, Your Honor, and I've drafted
2 discovery. I can e-mail it today.

3 THE COURT: Well, if it's drafted, it's --

4 MR. HALL: I understand. Your Honor, I'm not saying
5 it's an excuse, I was just explaining. 11:09:57

6 THE COURT: Well, how do we deal with this? I mean, I
7 don't even know, based on your failure to participate in the
8 joint case management report -- sounds like the defendant has
9 pretty good rationale that these people are not all the same,
10 that they have different qualifications, and that there may not 11:10:13
11 be anything other here than a complaint for a failure to get a
12 raise, which isn't going to go anywhere.

13 MR. HALL: And we have responses to that, Your Honor.
14 And, of course, it would have been in the joint case management
15 report. 11:10:30

16 THE COURT: And it's pretty clear that you can't sue
17 the Department of Education. Have you ever filed a Complaint
18 against the State of Arizona or any of its employees in the
19 past?

20 MR. HALL: Yes, Your Honor. 11:10:39

21 THE COURT: And you sued the State of Arizona; right?

22 MR. HALL: Yes. That's -- yes.

23 THE COURT: So is there really an issue here?

24 I mean, there's a substantial issue as to whether or
25 not this is time barred. Do we consider -- do you want to 11:10:55

1 argue those motions and proceed with that first? Because there
2 may not be anything left of this case, I don't know.

3 MR. HALL: Your Honor, I believe, as we argued in
4 the -- in our response and motion to correct, that even if the
5 Title VII case claims were dismissed, there's still the EPA 11:11:16
6 claims, which would have been timely. And I believe that the
7 State conceded that and did not file to dismiss on those
8 claims.

9 THE COURT: Government's position?

10 MS. BACALZO: That is true that -- 11:11:32

11 THE COURT: Pull the mic over.

12 MS. BACALZO: That is true, Your Honor. Even if the
13 Court were to grant our motion, there would be a remaining
14 Equal Pay Act claim. The plaintiff stipulated to the dismissal
15 of the Arizona Civil Rights Act claim, so that would be all 11:11:46
16 that was left.

17 And that was in the briefings on our motion for
18 judgment on the pleadings. So the Complaint, if our motion was
19 granted, would proceed only on the EPA.

20 THE COURT: Well, tell me what the issue is concerning 11:12:05
21 the native format on disk issue. You're talking to an old-time
22 judge here. What does that mean?

23 MS. BACALZO: I had to -- I'm familiar with the issue,
24 generally. I've been using electronic discovery for years, but
25 I also had to educate myself a little bit more. 11:12:30

1 Mr. Hall had asked for everything to be produced in
2 native format. And that's the format that the computer stores
3 it, as the software does. When you print a document -- I
4 actually brought a sample for you to see, and maybe to help
5 understand our objection to producing everything in native
6 format. 11:12:51

7 We have a position description -- would Your Honor
8 like to see this --

9 THE COURT: Yes.

10 MS. BACALZO: -- so I can explain? 11:13:01

11 I actually have two documents.

12 Your Honor, there's a position description
13 questionnaire, which we call the PDQ at the State of Arizona,
14 and it describes the position.

15 Now the second document that looks like a snapshot of 11:13:27
16 a computer screen is the only additional information that will
17 come if it's produced in native format. The Department of
18 Education doesn't store historical data on a document. So if
19 this document had been created five years ago and edited once
20 each year, this snapshot shows that that -- all those edits 11:13:48
21 made over those five years is not retained.

22 The only thing this shows is, when you go in
23 electronically and look at this document to print it, is who
24 last accessed the document. This information is not relevant
25 to this lawsuit. 11:14:11

1 Now the additional problem, as you can imagine with a
2 job search, you've got a file. And the way the State handles
3 applications is they come in electronically through the
4 Department of Administration. And then once the job posting is
5 closed, those applications are printed or there's a cut-off. 11:14:29
6 Let's say there's 100 applications, they don't have the time to
7 look at all 100, so they might cut it off at 25.

8 Producing that in native format is beyond our ability
9 because it's stored on a different site. I know it's all part
10 of the State, but I don't know if that's even possible. I 11:14:47
11 mean, how would you get a native format of somebody's resume?
12 I mean, it's submitted by someone.

13 So we have these files, these resumes, this position
14 description, oh, the interview process. We have handwritten
15 documents. That's not available electronically. We have this 11:15:05
16 entire file.

17 So what Mr. Hall is asking us to do is take each of
18 those documents in each job search file and go in and look
19 electronically for the information and produce, for example,
20 this for every one of those pages. 11:15:21

21 I had our IT staff at the Department of Education do a
22 test of four documents. Some could not be found
23 electronically. And that included e-mails. It was a fair
24 sampling of what might exist in terms of documents that would
25 be produced. Some couldn't be found, some could be found. 11:15:41

1 And my understanding is the issue of whether you
2 hard print the document and produce it or produce this in
3 native format is not the cumbersome part. The cumbersome
4 part is finding this electronically to the extent it exists.

5 And let's say a job search file has 100 documents, 11:16:04
6 they estimated it would take about 15 minutes per document to
7 find. It's just completely overburdensome for the State to do
8 that. We don't have the resources.

9 And furthermore, this is -- this additional
10 information is not relevant to this case. This is a 11:16:20
11 straightforward salary case.

12 Now I invited Mr. Hall by letter to let me know if
13 there were specific pieces of information that he would like
14 produced in this native format, then we'll go and look at that.
15 But the request was, I want everything in native format. And 11:16:38
16 to that we said no and gave some reasons for that. I did not
17 hear back in response to my letter.

18 But I have spent quite a bit of time, not only
19 researching, but meeting with EDA personnel, including the
20 information technologies staff, who have informed me that they 11:16:57
21 don't store electronically all of the history on a document.
22 But if there's a category of documents that we can talk about
23 and establish some relevance to the additional information that
24 might be available, then we can do that. But going into the
25 payroll records -- I mean, you print out a salary history, 11:17:21

1 there's no native format to that. It really more comes up with
2 these types of word documents.

3 So it's very, very expensive in terms of time. They
4 don't have the staff to do that, I've confirmed that, to be
5 able to look through each file.

11:17:42

6 THE COURT: Okay. Thank you.

7 Mr. Hall.

8 MR. HALL: Yes, Your Honor. I believe that initially
9 I need to clarify what the request was. I did not request that
10 everything be produced only in native format. The request was
11 by default documents will be produced in their native format.

11:17:54

12 And I believe, Your Honor, that that's actually -- that's
13 what's required under the rules. In Rule 34(b)(2) it says,
14 quote, if a request does not specify the form or forms for
15 producing electronically stored information, a responding party
16 must produce the information in a form or forms in which it is
17 ordinarily maintained, or in a form or forms that are
18 reasonably usable.

11:18:12

19 THE COURT: Or come to court.

20 MR. HALL: Yes, Your Honor.

11:18:29

21 The example given by opposing counsel I think is an
22 instructive one, that she said, well, it's not relevant who the
23 last person that accessed a document is. In fact, that could
24 be very relevant. If somebody disclaims knowledge of a
25 document, and we are, by looking at the native format, able to

11:18:44

1 tell that they, in fact, accessed it, then that would go
2 directly to their knowledge of that document.

3 THE COURT: But you have to know what that document is
4 to find lack of knowledge to ask a question about that.

5 MR. HALL: Yes, Your Honor. And what we're seeking is 11:19:01
6 really just pretty basic stuff, as far as electronic discovery
7 goes. It's not that we're asking them to do anything that's
8 overly burdensome. In fact, under the rules if it were overly
9 burdensome, that would be their response. If they said, you've
10 asked for ESI, that just will cost too much money, then they 11:19:20
11 need to state specifically what they did to investigate it,
12 specifically what the cost is, and what makes it overly
13 burdensome.

14 We, in fact, are just looking for key word searches.
15 We're looking for things that will allow us to engage in 11:19:35
16 discovery as efficiently as possible. Producing ESI should
17 actually be less expensive. In fact, all we're asking is not
18 that documents that are electronic be taken and converted,
19 printed out into paper, so they can be sent to us to be scanned
20 back in, as with most firms, and then reviewed in electronic 11:19:53
21 format. They're in electronic format. Copy them onto a disk
22 and provide it in that format.

23 I don't see that that is any more burdensome in
24 conducting word searches, looking through the electronic
25 files. 11:20:11

1 THE COURT: You just heard the inquiry she made and
2 the responses she got in making those inquiries.

3 MR. HALL: Your Honor, I do believe that under the
4 rules the argument that a specific request or set of requests
5 is overly burdensome has to be pled specifically. And they 11:20:24
6 have to state exactly what that burden is and how much, so we
7 can have an opportunity to respond to it. Just a
8 flat statement --

9 THE COURT: But you're asking this Court in the joint
10 case management report, to the extent that you participated, to 11:20:39
11 enter an order on native form disk. And the Court's not going
12 to do that or order that until such time as -- you're right,
13 they need to object to a question or an interrogatory and say,
14 this is too burdensome. But if you're going to hear the same
15 thing that she's telling us, then we have to know, other than a 11:21:02
16 generic request for some type of native form discovery, what it
17 is that you want answers to.

18 MR. HALL: And, Your Honor --

19 THE COURT: If you provided your discovery that you've
20 drafted, then we would have a basis to finally resolve this. 11:21:20
21 But this Court's not going to enter any scheduling order
22 requiring the utilization of a process that this Court's never
23 heard of before this case.

24 Now maybe other judges have, maybe they're familiar
25 with this, but this Court isn't, and this is the Court that's 11:21:40

1 managing this litigation.

2 MR. HALL: Yes, Your Honor. And I understand what the
3 Court is saying. And I suppose that's the ruling.

4 I just want to clarify that all we're asking is that
5 where there are two documents that are both reasonably 11:21:51
6 accessible, and it exists in electronic format, and the State
7 would want to print it out and provide it to us, that by
8 default it be provided in electronic format. That's the
9 totality of what we were asking for.

10 But I understand Your Honor's reasoning. 11:22:10

11 THE COURT: Well, that seems to make a difference if
12 there's just one document that's in digital format and one that
13 isn't, that you give them the digital format. Is
14 that as burdensome as --

15 MS. BACALZO: I don't think that is a problem. But 11:22:29
16 that was not the request that I received. And I'm positive
17 about that.

18 In terms of the native format, the reason this is not
19 relevant is, the person who goes in electronically, that could
20 be my IT person at ADE, it could be my HR representative, I 11:22:42
21 don't know who that would be, it's that person's access that is
22 being reflected in the native format. It's not the last person
23 before the person who's printing it out pursuant to a discovery
24 request.

25 But if it does -- if a document does appear that's 11:22:57

1 stored electronically, I don't think that will be a problem.
2 However, finding it is the problem if we also have a paper
3 copy. We keep paper files of this information. We don't
4 have the resources to store all of the job searches
5 electronically.

11:23:19

6 Judge, I also want to make a comment about some
7 difficulties in producing information, specifically like word
8 documents, like this position description questionnaire I gave
9 you. If -- well, this wouldn't have attorney/client
10 communications in it. But documents have to be reviewed and
11 Bates labeled before they're produced, and that is a cumbersome
12 process. There's no way to Bates label electronically every
13 document. There are challenges with that information. So it's
14 not easy necessarily to do.

11:23:37

15 And Mr. Hall represented that this was a less
16 expensive process. It is not. I'm familiar with another case
17 that he has against the State where the State agreed to produce
18 some electronically stored information, and the last word I
19 had, it was a \$30,000 tab for the Arizona taxpayers. It's not
20 cheap.

11:23:55

11:24:13

21 But we will cooperate and participate with Mr. Hall to
22 the extent we can. There's no reason not to. But, again, that
23 was not the request I received.

24 And we'll continue to produce paper documents, either
25 that we're going to use -- we've disclosed some already with

11:24:27

1 our initial disclosure statement, and will continue to
2 supplement throughout discovery.

3 But I wanted you to know those additional points as
4 well was part of my objection.

5 THE COURT: Tell me about the extended discovery
6 concerning interrogatories and subparts.

11:24:42

7 MS. BACALZO: Well, Your Honor, I served discovery on
8 the plaintiff that is overdue. I did serve those, let's see,
9 on September 16th. And they were due October 19th. And my
10 office received a request for an extension, which we agreed to.
11 And that deadline was November 3rd.

11:25:11

12 But mysteriously the original requests that were
13 mailed to the address on record for Mr. Hall, it came back.
14 And they came back in a strange way. We did not mail them
15 folded like they would go into a standard envelope, and it had
16 a strange stamp on it.

11:25:31

17 But in any event, we made Mr. Hall aware of this and
18 re-served them on October 31st. So whether he got them the
19 first time or didn't, he hasn't responded to that inquiry. But
20 giving him every benefit of the doubt, those responses are due
21 December 5th, which is coming up.

11:25:47

22 I think that, in my experience, getting voluminous
23 discovery requests in a fairly straightforward case, it is in
24 our best interests to say, well, how can we limit this
25 discovery? How can we limit the amount of information?

11:26:09

1 And we see this as a fairly straightforward matter.
2 And I would like to put some limits, reasonable limits on the
3 number of interrogatories, requests for admission and requests
4 for production. And Mr. Hall said in our 26(f) conference that
5 he was not willing to do that. I've made some proposals to 11:26:29
6 limit the amount of discovery so that it doesn't get
7 outrageously expensive for the State. In my experience we get
8 up to 50, 60 requests per category. And we're looking at
9 hundreds of requests for a straightforward wage salary case.
10 It doesn't seem to make sense. So that was why I had asked for 11:26:46
11 that, some limits.

12 THE COURT: Mr. Hall, response.

13 MR. HALL: Yes, Your Honor. I would have no objection
14 to what I understand are fairly standard limits of 40
15 interrogatories, RFPDs and RFAs. I think that's fairly fitting 11:27:00
16 for most cases and should satisfy the requirements here as
17 well.

18 THE COURT: So there's no issue here?

19 MR. HALL: I have no objection to what I understand is
20 very standard limitation. I've never known a case where there 11:27:16
21 was no limit whatsoever on discovery.

22 MS. BACALZO: I have had the experience with other
23 judges in this court where they have imposed 40 -- a limit of
24 40 per category. I've actually asked for less than that. But
25 I don't know if there is a standard. I have had many cases 11:27:38

1 where there has been -- and it actually works very well, it
2 forces the parties to work hard to serve legitimate requests
3 and not those that are overly burdensome.

4 THE COURT: Well, here again, the Court's burdened
5 because there's no input from the plaintiff on the joint case
6 management report. And I have little to go by.

11:27:55

7 What had you intended to provide as inserts? Had you
8 met that request?

9 MR. HALL: Your Honor, we provided for 40, 40, 40, in
10 discovery requests.

11:28:20

11 THE COURT: No, no, I'm talking about your statement
12 of the case.

13 MR. HALL: Oh, the statement of the case?

14 Your Honor, I believe that the assertion that it's
15 just a straightforward, you know, sour grapes over not
16 receiving a promotion or a pay raise is not accurate at all.
17 In fact, I think that the record will show that Miss Rexroat
18 was more highly qualified than a number of men who, in fact,
19 received higher pay raises, higher initial pay.

11:28:31

20 THE COURT: For the same -- precisely the same
21 specialty?

11:28:50

22 MR. HALL: I'm sure that there's going to be an issue
23 over definitions and what similarly situated is.

24 THE COURT: But you agree that there could be
25 different qualifications and different salaries for the --

11:29:03

1 MR. HALL: I'm not disputing that there could, of
2 course, be different qualifications and different salaries, but
3 that's part of what the discovery process is for, is for us to
4 show that even in some case where the State might assert that
5 there's a difference, that, in fact, their job duties and 11:29:19
6 responsibilities are the same, and it's simply a pretext for
7 the discriminatory pay structure.

8 THE COURT: But you had to have known that before you
9 filed the Complaint based on some evidence that the plaintiff
10 was aware of. 11:29:34

11 MR. HALL: Yes, Your Honor. And I believe that some
12 of the evidence we provided in the Complaint is indicative of
13 that. And that the -- there are several males who received a
14 higher initial pay, although they had no real job
15 qualifications, they didn't have the level of experience that 11:29:50
16 Miss Rexroat had in that specific area.

17 In fact, when they were looking at setting the initial
18 pay structure, there's a subjective component to it where they
19 look at what the prior pay was and what the competitiveness is.
20 And that's what they used to provide males with a higher 11:30:10
21 starting pay.

22 THE COURT: When did your client first go to work for
23 the State of Arizona?

24 MR. HALL: I don't know offhand, Your Honor.

25 THE COURT: More or less. 11:30:21

1 MR. HALL: I believe she's been there four years or
2 so, four or five years.

3 THE COURT: I see. So there should be no difference
4 based on inflation for higher --

5 MR. HALL: No, Your Honor. 11:30:36

6 THE COURT: -- qualified people.

7 MR. HALL: I believe all those things can be a
8 legitimate explanation, but they can also be a pretext. And if
9 you look at all the different factors, and if -- individuals,
10 taking those things into account, there's still a gender 11:30:47
11 difference between starting pay. That's rather significant,
12 because it's not just that gap that they start with, that gap,
13 that additional pay, follows them throughout their entire
14 career.

15 THE COURT: I see. Are you going to get those replies 11:31:02
16 and responses to the discovery requests in by the 5th?

17 MR. HALL: Yes, Your Honor.

18 MS. BACALZO: I'd also like --

19 THE COURT: Because one of the important things that
20 you need to know, once this scheduling order is entered, you 11:31:12
21 cannot stipulate to extensions of time. You need to come back
22 to the Court based on motion and good cause why these
23 scheduling time frames are not met.

24 MS. BACALZO: Your Honor, I'd also like the initial
25 disclosure statement from Mr. Hall as well. And I'm willing to 11:31:30

1 wait for it until December 5th.

2 THE COURT: This has been around since May.

3 MR. HALL: And again, Your Honor, I have it. I don't
4 have a good reason why it wasn't served. So I'll provide it
5 immediately.

11:31:51

6 THE COURT: Let me tell you about discovery disputes.
7 The Court prefers that if you have a discovery dispute -- now
8 maybe electronic discovery or these issues are different, but
9 if it takes place in the context of a deposition or in other
10 normal discovery contexts, I prefer that you pick up the
11 telephone and call the Court. If I'm in chambers I'll take
12 that call directly. If I'm in court I will take it at the
13 first recess. And we can usually resolve disputes that are
14 generated in those contexts without the necessity of filing
15 motions for protection, motions to compel, et cetera.

11:32:07

11:32:28

16 Anything else?

17 MS. BACALZO: Your Honor, on the issue of the
18 settlement, I had suggested an early settlement conference to
19 Mr. Hall, and he thought it was too early when we spoke on
20 September 15th. We'd still like to have a settlement
21 conference set.

11:32:57

22 This case presents some unique challenges in that some
23 of the witnesses could be people that are working side by side
24 with Miss Rexroat. It makes it uncomfortable, potentially
25 difficult. So we're cognizant of that as an agency. And we

11:33:18

1 thought if we can meaningfully sit down and discuss resolution
2 it would be helpful.

3 THE COURT: I hear you. That's in everybody's best
4 interests.

5 Whenever you feel that you're ready for a judicial 11:33:31
6 officer to help in a settlement conference, all you need to do
7 is jointly notify the Court. If you choose to go outside the
8 court for private mediation, as is often done in these cases,
9 bear in mind that you can do that any time you want, but it
10 will not interfere with the schedule that the Court enters. It 11:33:50
11 has to be -- all those deadlines must be met. And you'd have
12 to figure out a way to do that.

13 MS. BACALZO: Would it be possible to set a magistrate
14 at this point in time, or does the request need to be jointly
15 made? 11:34:05

16 THE COURT: Well, whenever you're ready --

17 MR. HALL: We're agreeable to that.

18 THE COURT: Are you ready?

19 MR. HALL: Yes, Your Honor.

20 THE COURT: But you haven't done any discovery. You 11:34:09
21 haven't even got the initial disclosures.

22 MR. HALL: I believe -- in --

23 THE COURT: How can you settle --

24 MS. BACALZO: Well --

25 THE COURT: -- if there's no basis to his claim? 11:34:17

1 MS. BACALZO: I've done extensive fact investigation
2 with my client. I know what the facts are. I've disclosed a
3 lot of that information. I think I know what I'm looking at,
4 at least initially to get together and try to reach some common
5 ground. I presume -- if we were referred --

11:34:32

6 THE COURT: If you're agreeable to that, we can pull a
7 judge right now. But that won't interfere with the scheduling
8 order that the Court's going to enter.

9 MS. BACALZO: Understood.

10 Ideally it would be set next year, you know, so we
11 would --

11:34:48

12 THE COURT: But see, the process there is that
13 judicial officer then has to figure out a time and have briefs
14 presented so that he or she knows what to expect at the
15 settlement conference if they're going to be of any help.

11:35:04

16 I think we better let you decide if you're ready to go
17 with that.

18 MS. BACALZO: Okay. I'll further explore that.

19 THE COURT: We've got to get a scheduling order in
20 place and get it in place soon.

11:35:16

21 MS. BACALZO: Okay.

22 THE COURT: Anything else? Any questions about the
23 Court's management policies?

24 MS. BACALZO: No, Your Honor.

25 MR. HALL: No, Your Honor.

11:35:23

1 THE COURT: We'll make a ruling on the pending motions
2 and we will enter a scheduling order and see where this
3 litigation leads.

4 Thank you, Counsel.

5 MS. BACALZO: Thank you.

11:35:32

6 (Proceedings concluded at 11:35 a.m.)

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C E R T I F I C A T E

I, CANDY L. POTTER, do hereby certify that I am duly appointed and qualified to act as Official Court Reporter for the United States District Court for the District of Arizona.

I FURTHER CERTIFY that the foregoing pages constitute a full, true, and accurate transcript of all of that portion of the proceedings contained herein, had in the above-entitled cause on the date specified therein, and that said transcript was prepared under my direction and control.

DATED at Phoenix, Arizona, this 27th day of January, 2012.

s/Candy L. Potter
Candy L. Potter, RMR, CRR